to a sheriff to commit the respondents to jail for contempt. That section provides as follows:

> "(b) Non-judicial. Unless otherwise provided, if a person fails to comply with a subpoena which is not returnable in a court, the issuer may move in the supreme court to compel compliance. If the court finds that the subpoena was authorized, it shall order compliance and may impose costs not exceeding fifty dollars. A subpoenaed person shall also be liable to the person on whose behalf the subpoena was issued for a penalty not exceeding fifty dollars and damages sustained by reason of the failure to comply. A court may issue a warrant directing a sheriff to bring the witness before the person or body requiring his appearance. If a person so subpoenaed attends or is brought before such person or body, but refuses without reasonable cause to be examined, or to answer a legal and pertinent question, or to produce a book, paper or other thing which he was directed to produce by the subpoena, or to subscribe his deposition after it has been correctly reduced to writing, the court, upon proof by affidavit, may issue a warrant directed to the sheriff of the county where the person is, committing him to jail, there to remain until he submits to do the act which he was so required to do or is discharged according to law. Such a warrant of commitment shall specify particularly the cause of the commitment and, if the witness is committed for refusing to answer a question, the question shall be inserted in the warrant."

The respondents in the *Ruskin* case when questioned by the Commissioner of Investigation pretended to answer the key questions by asserting that they could not recall the events they were asked about. They did not refuse to

answer on the basis that their answers would tend to incriminate them. Their tactics, thus far successful, were to give inherently incredible responses to detailed questions concerning notes admittedly in their own handwriting.

Instead of considering the question of whether respondents' acts were contemptuous, the Court in Special Term in our opinion erroneously disposed of the case on the basis that the Commissioner of Investigation lacked the statutory power to grant immunity under Section 619-c of the New York Code of Criminal Procedure. That Court also ignored completely the careful consideration given to this question in the opinion of the Second Circuit Court of Appeals in the case now before this Court (426 F.2d 619):

The decision in *Ruskin* will be appealed to the Appellate Division, First Department of the New York Supreme Court. To the extent it is in conflict with the decision of the Second Circuit below it is clearly erroneous. The Second Circuit correctly disposed of the issues presented here. Nothing in *Ruskin* either on its facts or its view of the law should lead this Court to grant the petition sought herein.

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Respectfully submitted,

J. LEE RANKIN
Corporation Counsel
Attorney for Respondents

JOHN J. LOFLIN, JR.
YVETTE HARMON
Of Counsel